

Notice of Allowability

Application No.

10/613,686

Examiner

Gregg Cantelmo

Applicant(s)

JIANG ET AL.

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/24/06.
2. ☒ The allowed claim(s) is/are 23-31,33,34,37-41 and 76.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>7/3/06</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

Response to Amendment

1. In response to the amendment received July 24, 2006:
 - a. Note first that the previous amendment received July 3, 2006 was non-compliant as not entered. For purposes of clarity, the replacement drawings submitted therein have been approved;
 - b. Claims 23-31, 33- 34 and 37-76 are pending. Since claims 23-31, 33, 34, 37-41 and 76 are in condition for allowance, the withdrawn invention of claims 42-75 have been cancelled by Examiner's amendment herein;
 - c. The amendment to the specification received July 24, 2006 has been entered.

Drawings

2. The drawings were received on July 3, 2006. These drawings are approved.

EXAMINER'S AMENDMENT

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

- a. Withdrawn claims 42-75 have been cancelled as to the non elected claims. Under these circumstances, when the application is otherwise ready for issue, the claims to the nonelected invention, including nonelected species, may

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be canceled by an examiner's amendment, and the application passed to issue.

See MPEP § 821.02.

Allowable Subject Matter

4. Claims 23-31, 33, 34, 37-41 and 76 are allowed.

The following is an examiner's statement of reasons for allowance: none of the prior art of record appear to teach or reasonably suggest the method of claim 23. The amendment further defines the method whereas the prior art methods of JP '609 and Kosta are materially different from that of the amended claims. Kosta employs a roller application process for fabricating the anodes and does not employ the claimed mold and compaction process defined in claim 23. Nor does Kosta teach or suggest of adding a fluid to the anode cavity of the cell to activate a gelling agent in the anode.

To a greater extent, JP '609 lacks clear teachings of the various process steps of claim 23 such as mold and compaction process and of adding a fluid to the anode cavity of the cell to activate a gelling agent in the anode as recited in claim 23.

None of the remaining prior art of record teach or suggest the invention of claims 23-31, 33, 34, 37-41 and 76.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Double Patenting

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5. If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

If "provisional" ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue. If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer. Where there are three applications containing claims that conflict such that an ODP rejection is made in each application based upon the other two, it is not sufficient to file a terminal disclaimer in only one of the applications addressing the other two applications. Rather, an appropriate terminal disclaimer must be filed in at least two of the applications to link all three together. This

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is because a terminal disclaimer filed to obviate a double patenting rejection is effective only with respect to the application in which the terminal disclaimer is filed; it is not effective to link the other two applications to each other. MPEP § 804.

In the case of the instant application and co-pending application 10/613,681, the instant application is directed more broadly to alkaline batteries whereas co-pending application 10/613,681 is narrower to a particular class of alkaline batteries, that being zinc/air batteries. Therefore it is the Examiner's position that while the two applications were filed on the same day, the instant application is held to claim the base invention. With that understanding, and in light of the fact that the only remaining issue in the instant application would have been the double patenting rejection, the double patenting rejection in this application has been withdrawn without a terminal disclaimer. Applicant is required to file a terminal disclaimer in co-pending application 10/613,681.

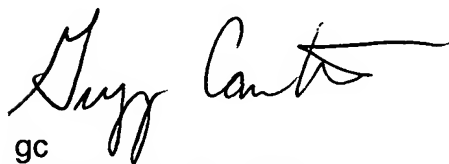
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregg Cantelmo whose telephone number is 571-272-1283. The examiner can normally be reached on Monday to Thursday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


gc
September 30, 2006

Gregg Cantelmo
Primary Examiner
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